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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MAXIMILIAN KLEIN, et al.,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 3:20-cv-08570-JD

Hon. James Donato

**ADVERTISER PLAINTIFFS' PROFFER
REGARDING EXPERT TESTIMONY**

Advertiser Plaintiffs submit this expert proffer in response to the Court’s April 18, 2024 minute order concerning expert testimony. *See* Dkt. 789. The Court’s order authorized “one liability and one damages expert” for each party, and permitted Advertiser Plaintiffs to make a proffer regarding an additional expert. As set forth below, Advertiser Plaintiffs offer two economic experts—Dr. Michael Williams and Prof. Tilman Klumpp—and one technical expert, Dr. Markus Jakobsson.

* * *

This is a monopolization case arising from Meta’s unlawful actions to maintain its monopoly power (and profits) in the sale of social advertising, an economically distinct submarket of online advertising. Between late 2016 and 2020, Meta engaged in an aggressive campaign to strengthen barriers to entry, check the rise of nascent competitors (most notably Snapchat), and deceive regulators with the goal of maintaining its dominant position, and attendant supracompetitive prices, in the United States Social Advertising Market. As explained more fully in Advertiser Plaintiffs’ Motion for Class Certification, Dkt. 795-1, Meta’s actions included striking an insider deal with a board member-turned-competitor, entering a market-distorting agreement with Google, buying off hand-picked potential entrants with privileged access to Meta user data, lying to the FTC to avoid divestiture and—perhaps most jaw-droppingly—redirecting and decrypting the encrypted analytics traffic of competitors, including Snapchat, using nation-state level hacking methods and technologies. *See id.* at 4:19-13:3.

Meta’s unlawful maintenance of its monopoly power in the United States Social Advertising Market caused an anticompetitive overcharge in that market, which people who bought Meta Ads between December 1, 2016 and December 1, 2020 (the Class Period) paid and were injured by. The Advertiser Plaintiffs are people and businesses that bought—and overpaid for—Meta Ads during the Class Period. They bring this lawsuit for themselves and for a putative class of Meta Ad purchasers, asserting Sherman Act Section 2 claims (for monopolization and attempted monopolization of the U.S. Social Advertising Market) and a Section 1 claim (for an anticompetitive agreement with Google that was part of Meta’s monopolization effort).

At trial, Advertisers will prove the existence of the United States Social Advertising Market as a relevant antitrust market; Meta’s monopoly power in that market during the Class Period; Meta’s

[REDACTED]

1 exclusionary conduct seeking to maintain that monopoly power; and the existence and amount of
2 anticompetitive overcharge. As noted in Advertiser Plaintiffs' Motion for Class Certification, Meta's
3 anticompetitive conduct—an anticompetitive course of conduct comprising five categories of
4 exclusionary acts—will be the principal focus at trial. Dkt. 795-1 at 4-5.

5 Advertiser Plaintiffs seek to offer the testimony of three experts—two antitrust economists
6 and a technical expert—to help the jury and the Court understand the issues and evidence at trial in
7 the Advertiser case. These experts, and the subjects of their proposed testimony, are identified below:

8 (1) Michael A. Williams, Ph.D.: Dr. Williams, an antitrust economist who previously
9 served at the Antitrust Division of the U.S. Department of Justice, will offer expert testimony
10 concerning the existence and characteristics of the United States Social Advertising Market as a
11 relevant antitrust market, Meta's monopoly power in that market during the Class Period, and the
12 classwide overcharge injury and damages suffered by Meta Ad purchasers from Meta's monopoly
13 maintenance.

14 (2) Prof. Tilman Klumpp: Prof. Klumpp, a Professor of Economics at the University of
15 Alberta, will offer expert testimony concerning the economic impacts of Meta's five categories of
16 exclusionary conduct, including how each category of conduct by Meta helped maintain the
17 company's monopoly power in the United States Social Advertising Market during the Class Period.

18 (3) Markus Jakobsson: Dr. Jakobsson, a Ph.D. computer scientist with more than twenty-
19 six years' experience in academia and industry specializing in computer systems, cybersecurity, and
20 cloud computing, will offer expert testimony concerning the technical details of Meta's [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED].

24 Dr. Jakobsson received his Ph.D. in computer science, specializing in cryptography, from
25 UCSD in 1997. From 1997-2001, Dr. Jakobsson was a Member of Technical Staff at Bell Labs,
26 performing research on authentication, privacy, multi-party computation, e-commerce, and fraud
27 detection and prevention. From 2001-04, he was a Principal Research Scientist at RSA Labs, where
28 he worked on predicting future fraud scenarios in commerce and authentication. From 2002-04, he

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1 was an Adjunct Associate Professor in the computer science department at NYU, teaching
2 cryptographic protocols. From 2004-2016, Dr. Jakobsson held a faculty position at Indiana
3 University, where he was the most senior security research at IU and built a research group focused
4 on online fraud and countermeasures, resulting in over 50 publications and two books. One of these
5 books, “Crimeware: Understanding New Attacks and Defenses” (Wiley, 2008), described man-in-
6 the-middle attacks, online attacks and abuses in general, and countermeasures. While a professor at
7 IU, Dr. Jakobsson was employed by Xerox PARC (Principal Scientist, 2008-10), PayPal (Director
8 and Principal Scientist of Consumer Security, 2010-13), and Qualcomm (Senior Director, 2013-15)
9 to provide through leadership to their security groups. From 2016-18, Dr. Jakobsson was Chief
10 Scientist at Agari, from 2018-20 he was Chief of Security and Data Analytics at Amber Solutions,
11 and from 2020-21 Dr. Jakobsson was Chief Scientist at ByteDance, where he guided the security
12 research for both ByteDance and TikTok until leaving to co-found Artema Labs, where he is Chief
13 Scientist.

14 Dr. Jakobsson has authored or co-authored seven books, over 100 peer-reviewed publications,
15 has been a named inventor on over 200 patents and patent applications, and has delivered numerous
16 presentations including keynotes at several international conferences and workshops as well as the
17 U.S. Patent and Trademark Office. A large number of these relate to Internet security, authentication,
18 malware, spoofing and related topics. Dr. Jakobsson’s publications and presentations cover topics
19 including, but not limited to: digital signatures, randomness, security analysis, crimeware, phishing,
20 electronic identity theft, email security, endpoint security, network security, digital fraud, software-
21 based attestation, remote transaction security, and malware detection. His peer-reviewed publications
22 have been cited at least 20,136 times, according to Google Scholar.

23 Dr. Jakobsson’s testimony will be useful to the jury and the Court because Meta’s [REDACTED]
24 conduct is technically complex, and implicates evidence and witness testimony that is beyond the
25 technical and industry knowledge of the average layperson—and Meta has sought to leverage this
26 complexity in its defenses and arguments in this case.

27 The essential conduct about which Dr. Jakobsson will testify concerns [REDACTED]
28 [REDACTED]

[REDACTED]

[REDACTED]. In June 2016, Mark Zuckerberg emailed three top lieutenants, Javier Olivan (now COO), Alex Schultz (now CMO), and Chris Cox (Chief Product Officer), to say:

Whenever someone asks a question about Snapchat, the answer is usually that because their traffic is encrypted we have no analytics about them.

Given how quickly they're growing, it seems important to figure out a new way to get reliable analytics about them. Perhaps we need to do panels or write custom software. You should figure out how to do this.

PX 2255 at PALM-016564836.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We developed "kits" that can be installed on iOS and Android that intercept traffic for specific sub-domains, allowing us to read what would otherwise be encrypted traffic so that we can measure in-app usage (i.e., specific actions that people are performing in the app, rather than just overall app visitation). This is a "man-in-the-middle" approach.

PX 414 at 1.

Again, the words and concepts in this key exhibit are avowedly technical. As Dr. Jakobsson will explain, walking the jury and the Court through evidence far more complex than the above—including [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

As Dr. Jakobsson will testify,

[REDACTED]

[REDACTED]

[REDACTED] Dr. Jakobsson will explain all of the above, so that the jury and the Court

can understand what, exactly, Meta was doing to [REDACTED]

[REDACTED] during the Class Period.

[REDACTED]

[REDACTED]

Although Meta has taken the position that the technical details of its [REDACTED] program need not be understood by the jury and the Court to adjudicate this case, Meta's actual defenses and arguments with respect to [REDACTED] give the lie to this position. For example, Meta (and indeed, [REDACTED])

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1 [REDACTED] but Dr.
2 Jakobsson—who is both a computer security expert and a longtime industry participant, including
3 holding positions at PayPal, Qualcomm, and ByteDance in the past decade—will testify that Meta’s
4 peers [REDACTED]
5 [REDACTED]. Indeed,
6 Dr. Jakobsson will testify that these specific methods are characteristic of notorious hackers and
7 nation-states seeking to spy on dissidents, not generic “market research.”

8 Moreover, without a technical expert like Dr. Jakobsson to walk the jury and the Court through
9 the details of what it means to [REDACTED] it may not be
10 apparent [REDACTED]
11 [REDACTED]. This is important because it shows the [REDACTED]
12 [REDACTED]
13 [REDACTED]—a fact directly contradicting Meta’s argument that [REDACTED]
14 [REDACTED] was not competitively important to the company during the Class Period.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 Finally, to the extent that Meta argues that technical expertise is *not* necessary to understand
10 the details of its [REDACTED] program, consider the words of [REDACTED]
11 [REDACTED] in this case:

- 12 • [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED].
- 16 • [REDACTED]
17 [REDACTED]
18 [REDACTED].
- 19 • [REDACTED]
20 [REDACTED]
21 [REDACTED].

22 Between the technical complexity of the [REDACTED] evidence and conduct (a complexity not just
23 facially apparent, but affirmatively identified by [REDACTED] and the nature
24 of Meta's [REDACTED] defenses (defenses that seek to trivialize and mischaracterize the technology and
25 efforts involved in the program), Dr. Jakobsson's expert testimony will unquestionably help the jury
26 and the Court to understand, appreciate, and fairly adjudicate the issues pertaining to Meta's [REDACTED]
27 conduct at trial in the Advertiser Plaintiffs' case. Further, there can be no serious dispute that Dr.
28 Jakobsson's testimony will be in any way duplicative: Dr. Williams and Prof. Klumpp are economists,

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1 with no material expertise in computer security. There will be no one else at trial to fairly explain to
2 the jury what exactly was going on at Meta [REDACTED]
3 [REDACTED]—an issue exacerbated by [REDACTED]
4 [REDACTED] throughout depositions in this case.

5 Dr. Jakobsson is perfectly suited to walk the jury and the Court through the technical
6 complexities of Meta's [REDACTED] program, and the evidence and testimony surrounding it. He has already
7 served opening and rebuttal expert reports and has already been deposed by Meta.

8 The Court should permit Dr. Jakobsson to testify as an expert at trial in the Advertiser
9 Plaintiffs' case.

Dated: August 9, 2024

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FILER ATTESTATION

I am the ECF user who is filing this document. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the other signatories have concurred in the filing of the document.

Dated: August 9, 2024

By: /s/ Brian J. Dunne